

STATE OF MICHIGAN
COURT OF APPEALS

PHILIP L. WRIGHT, PAMELA G. WRIGHT, and
CARL E. WELMERS,

UNPUBLISHED
April 11, 2006

Plaintiffs-Appellees,

v

TIMOTHY H. CLAUS, JAMES G. NIHEMS, JR.,
and PRO-MED DELIVERY, INC., a Michigan
Corporation,

No. 258762
Kent Circuit Court
LC No. 01-007550-CZ

Defendants,

and

SEND DELIVERY, INC.,

Defendant-Appellant.

Before: Smolenski, P.J., and Owens and Donofrio, JJ.

MEMORANDUM.

Defendant Send Delivery, Inc., appeals as of right from an order denying its motion to set aside a default. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Send Delivery, Inc., was defaulted when it did not timely answer a complaint filed by plaintiffs. The trial court refused to set aside the default, finding that Send Delivery had demonstrated neither good cause nor the existence of a meritorious defense.

We review a trial court's ruling on a motion to set aside a default for an abuse of discretion. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999). Generally, this Court will not set aside defaults that have been properly entered. *Id.* at 229. Pursuant to MCR 2.603(D)(1), "[a] motion to set aside a default or a default judgment, except when grounded on a lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed." Thus, a default will not be set aside unless the defaulting party demonstrates both "good cause" and a "meritorious defense." *Barclay v Crown Bldg & Dev, Inc*, 241 Mich App 639, 653; 617 NW2d 373 (2000). "Good cause is established by (1) a procedural irregularity or defect, or (2) a reasonable excuse for not complying with the requirements that created the default." *Id.*

Substantial evidence showed that Send Delivery's failure to appear or answer the complaint in a timely manner was the result of negligence. A party is plainly responsible for the actions of its agent. Neglect of an attorney is attributable to the party against whom the default is entered, and the attorney's neglect normally does not constitute grounds for setting aside a default. *Park v American Casualty Ins Co*, 219 Mich App 62, 67; 555 NW2d 720 (1996).

Moreover, Send Delivery did not demonstrate the existence of a meritorious defense before the trial court. Send Delivery relied on an affidavit of meritorious defense filed by non-participating defendant Timothy H. Claus. The trial court concluded that Claus' claims that plaintiffs had voluntarily quit their employment were not true. The trial court's conclusions were adequately supported by the record.

Finally, Send Delivery's arguments concerning the adequacy of plaintiffs' claims were not raised before the trial court. Therefore, we decline to address them. See *Klapp v United Group Ins Agency, Inc*, 259 Mich App 467, 475; 674 NW2d 736 (2003).

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald S. Owens
/s/ Pat M. Donofrio